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Feitner, Thomas L.

Thomas L. Feitner on
taxation as affecting...

[New York]

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THOMAS L. FEITNER

ON

TAXATION

AS AFFECTING

NEW YORK CITY,

As Presented to the Manhattan Municipal League
and the Real Estate Board of Brokers.

MARCH, 1903.



W. P. MITCHELL & SONS,
PRINTERS,
30 Bookman Street,
New York.

1913 N.Y. 100-17

TAXATION AS AFFECTING NEW YORK CITY.

In presenting the facts in this paper for your consideration, two phases of the present incongruous condition of taxation in this State were dominant in my mind and seemed to me to require more than cursory attention.

First: That recent (dubious) mending of some of the statutes governing this subject, while ostensibly for the purpose of conferring "Local Option" as we popularly term it, actually does quite the reverse and cannot fail to lead us to the conclusion that it has been done on the principle that the amount of taxes that can be raised upon the real estate, personal property and business interests of Burrough of Manhattan for the easement of the tax burden of the rest of the State the better, and for no more sufficient reason apparently, than that the end justifies the means, and secondly, to place before you the effect of such legislation, in the actual payments made by us, and the disposition now evinced, to appropriate for State purposes alone the revenues of this City, which should be at least proportionately applied to State and City requirements.

To become at all conversant with the question of taxation in this State, now in a somewhat transitory condition, due to numerous inadequate statutes passed during the last few years, a brief resume of some past and present features of the situation is necessary.

You are all doubtless aware that the city pays to the State what are known as direct and indirect taxes.


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The direct tax for which we are liable each year, is determined by the State Board of Equalization, which is composed of certain State officers and members of the State Board of Tax Commissioners, which last board is required by law to visit each county or locality once in two years and make examination to the end of determining the equalized values between the different counties, and upon their report the Board of Equalization increases or reduces the valuation and fixes the taxable amount upon which the city or locality is chargeable for its proportion of State taxes.

Under the "direct" system great injustice has been done this city in the proportion of State taxes it has been compelled to pay, and until a few years ago, having been accorded no representation in the examining Board of State Tax Commissioners.

The situation had become so aggravated that the Tax Board of this city, of which I had the honor to be president, felt called upon to voice its disapproval in the following statement which indicates the condition then existing: "The present equalization by the State Board seems to us to be an arbitrary act, and, in justice to the taxpayers of this city we must enter our protest against the increase in valuation of the real estate of this city for State purposes by the State Board of Equalization. Every one who pays taxes in this city must be affected by the result of this unwarranted action of the State Board—a board in which this city is not represented, although it pays nearly one-half of the total State taxes. This year the Commissioners, in order to help the State Board of Equalization arrive at a fair and equitable decision in the equalization of the land values of this State, and particularly those directly affecting this city, caused to be made a thorough investigation of the methods of assessing real estate in a number of counties throughout the State, the result showing in the most conclusive manner the injustice of the levy on New York City.

"In eighteen counties of the State the assessed valuation was returned to the State Board as being from 65 to 85 per cent. of the actual value; whereas the investigation of this department in the same several counties, shows that the real proportion of assessed and actual value is 34 to 55 per cent. Nevertheless, there was added by the State Board to the assessed valuation of real estate in this city the enormous amount of \$188,753,108, a huge burden to place upon the property owners of this municipality."

Since then New York City has been given one representative in the State Board.

We now come to the "indirect" system and its working. First: The introduction of the taxation for State purposes only of corporations, upon the amount of capital invested in the State. The State Comptroller fixes the tax, and the payment thereof is made to him directly.

Second: The transfer or inheritance tax, which is also paid directly to the State Comptroller, under appraisements made by appraisers appointed by the State Comptroller, after an adjudication as to their valuation by the Surrogate of the county, who enters an order fixing the appraisement and amount of tax.

Third: The law authorizing the taxing of hotels, etc., commonly known as the Excise Law. One-third of this tax, less the amount allowed for collecting, is paid to the State Treasurer.

Fourth: The small tax on the amount of capital authorized by the different corporations for organizing under the laws of this State.

These and a few others of minor importance are paid to the State Treasurer direct.

Some additional forms of taxation introduced the past few years, viz.: the commonly known Franchise Tax, upon railroads and others using our streets, a separate Bank and Trust Company Tax, illustrate as fully as need be the incomplete tax system heretofore placed upon our statutes.

The Special Franchise Tax became a law in 1899, immediately after public attention was directed to the subject by myself and colleagues of the City Tax Board as follows: "The decision of the Court of Appeals in 1891, by which corporations were made assessable on their tangible assets and not upon their capital share stock, had the effect of eliminating the valuation of the intangible franchise of all corporations for local purposes, and notwithstanding that our city had lost by this system since 1891 over a hundred million of dollars in valuations, no steps had been taken nor recommendations made by which the inequality might be remedied."

Under this law the State Board of Tax Commissioners fixes the valuation of what is designated as the tangible property, such as telegraph lines, wires, poles, etc., and shall include in such valuation, the value of all franchises, rights or permission to construct, maintain or operate the same, in, under, above, on or through streets, highways or public places, and upon such valuation being made the State Board of Tax Commissioners are directed to return them to the localities within thirty days of the time fixed by law. Such valuation is to be entered by the local assessors in their assessment rolls, and to "become part thereof, with the same force and effect as if such assessment had been originally made by such assessors or other officer."

The tangible assets, amounting to about \$80,000,000 in valuation, had heretofore been assessed by the local authorities, but by this Special Franchise Act you will observe that this power is transferred to the State Board, and included in it is the intangible franchise, the valuation of which was about \$130,000,000, in addition to the \$80,000,000.

We now come to a most anomalous proposition, inexplicable in itself but clearly discernible as an initial step towards appropriating local taxes for State purposes

alone. I allude to the method of taxing banks and trust companies.

Prior to 1899 the banks were assessed through the individual shareholders on the actual value of their share stock, while the trust companies, their competitors in business, were assessed as a corporation and permitted to invest their assets in non-taxable securities and also allowed the deduction of their debts, and otherwise permitted by law to avoid just taxation.

Perhaps the conditions above referred to may account for the wonderful increase in trust companies in this city during the year 1898, and although their capital had been increased \$14,850,000, the tax rolls could not show any appreciable increase in their valuation, because of the aforesaid conditions. We repeatedly urged the necessity of correcting them, and recommended that the laws of assessment applicable to banks be applied to trust companies.

This recommendation resulted in the enactment of two laws affecting banks and trust companies, under which the whole amount collected from the banks is paid into the City Treasury, and the whole amount collected from the trust companies is paid into the State Treasury. The Trust Company Act is the entering wedge by the State for appropriating to its use alone the entire amount of the tax upon property heretofore assessed by the locality. This will assume its proper significance when it is understood that 96 per cent., of the total tax collected from this source is paid by business institutions of this city. This is quite consistent with the action of the State Board in the past, when operating through the Board of Equalization upon the old basis, *i. e.*, an overweening desire to

lighten the tax burdens of our up-State neighbors at our expense.

The new charter, consolidating Brooklyn, Queens and Richmond with New York City, went into effect the first day of January, 1898. The result of its operation is interesting to all who watch the trend of public affairs, and particularly so to those who have been compelled to meet the increased charges incurred thereby. There can be no question as to the responsibility for its enactment, the Democratic minority opposed it in both houses until its final adoption, so that full responsibility was assumed by a Republican Legislature and Governor for the result, whatever it might be. It contained no provision restricting the officials of the incoming boroughs during the time elapsing from its passage until it went into active operation, as to the creation of debt or incurring of liability, so that each borough irresponsibly contracted large debts which placed the consolidated city on the first day of January in a most undesirable financial position, a surplus of \$19,339,637, belonging to the Boroughs of Manhattan and The Bronx, was neatly absorbed by a deficit of \$19,617,923, chargeable to the Borough of Brooklyn, \$5,094,431 of a deficit chargeable to Queens, and \$1,049,581 of a deficit chargeable to Richmond, gave the consolidated city a net deficit of \$6,422,299. As the indebtedness exceeded the limitation according to the Constitution, progress upon public works in Manhattan and The Bronx especially were practically at a standstill. The readjustment of the expenditures of the greater city for 1898 involved an additional expenditure over and above the amounts appropriated by the separate cities, towns, etc., of \$7,175,850, which was by law distributed in the year 1899, and payable by

the different boroughs according as the same should be determined to be due.

This distribution affected the rates for the boroughs of Manhattan, The Bronx and Brooklyn to the following extent: In Manhattan and The Bronx it ran up to \$2.48 from \$2.10, in Brooklyn it decreased to \$2.36 from \$2.86.

With a commission composed largely of representatives of the City of Brooklyn, and that city being practically bankrupt, it was deemed by them of the utmost importance that whatever deficiency should arise incident to carrying on the municipal government as consolidated, should be borne chiefly by the Boroughs of Manhattan and The Bronx.

To comply with section 899 of the charter necessitated an increase of something like three hundred millions on the assessed value of the real estate of Manhattan and The Bronx, the effect of such increase being that the greater city was no longer financially stagnant, but was enabled to go on with its public works and fulfill its proper governmental functions. This did meet the approbation of a certain class of individuals, so a Charter Revision Committee was appointed.

By these good gentlemen the financial safety valve of our municipality against extravagance, the Board of Estimate and Apportionment, was disbanded and a new contrivance called by a similar name was formed. It constitutes the representatives of the boroughs whose woeful financial condition has been shown, one-half of such board, thus according them a representation thereon out of all proportion to their numerical or financial standing.

Had these gentlemen any motive in laying the burden upon Manhattan and then tying her hands, so to speak?

They have, upon the pretext of equitable assessments, destroyed the conservative valuation of property heretofore always maintained and opened the door to really unlimited appropriations to especially benefit boroughs that combined will pay but 25 per cent. of each dollar appropriated.

It requires a sense of humor to discover reform for Manhattan in this. Its assessments are increased 48 per cent., The Bronx over 60 per cent., Brooklyn only 27 per cent., Queens only 13 per cent. and Richmond only 11 per cent.

On account of the merger of the departmental appropriations it is well nigh impossible to differentiate the actual amount appropriated to each borough, but we know that the mandatory provisions of the charter necessitate appropriations far in excess of the financial ability of the incorporated boroughs, if dependent upon their own resources to meet, the consequence being that Manhattan assumes their burden without proportionate benefit.

In conclusion permit me to suggest that Manhattan must be more zealous if she desires equality in appropriations. If mandatory conditions similar to the mandatory provisions of the Constitution applicable to the whole city were imposed, that appropriations could not exceed the ability of each borough to pay, relief would be obtained, and this city would not be forced to use its pledged credits for the payment of the bonded debts, *i. e.*, the Sinking Fund, for the ordinary expenses of administration, and this leads us to the fact that the recent departures from the safe financial path both leading to extravagance in govern-

ment, as no citizen can contemplate with indifference, are now well under way; the radical high valuation of real property, and the menace to the honor and credit of our city, in encroaching upon the Sinking Fund heretofore held as almost sacred.

**After Dinner Remarks at the Dinner of the Real Estate Board
of Brokers Held at Waldorf Astoria, March 7, 1903.**

The vast interest in real estate represented by you in the Borough of Manhattan and elsewhere makes you no doubt particularly interested in whatever may disturb or affect those interests, and from a patriotic view also in whatever affects the commercial, financial and general business affairs of our city, and there is no subject which has more of an intense interest, than that of taxation, with its stupendous magnitude, and its varied influences and possibilities.

We can now view two elements striving for the mastery in their efforts to build up the grandeur and greatness of our metropolis, one is the exponent of theoretical radicalism, and the other of practical conservatism.

The present governmental condition represents radicalism and the past conservatism.

Having now stated the proposition before you permit me to suggest that I will be somewhat controlled in my remarks by the disposition to rather assist in the digesting of the very excellent dinner provided by your dinner committee, and will therefore ask you to assume, although I am a native of Manhattan Borough, and my heart is full of love and affection for its citizens, that I am to-night a representative of Brooklyn, and will speak to you from that standpoint.

I desire to begin by emphasizing the fact that we Brooklynites, with very few exceptions, are first, last and all the time sufficiently provincial to be for the success and rights of Brooklyn, against any party or any other interest in this city or State, and are willing to unite with any party, Democratic, Republican, Reformer or Mugwump, who will guarantee more than our rights in the future government of this city, and as a consistent Brooklynite I will now submit in the form of a report what we have already accomplished.

Previous to 1896, by persistent agitation, we cultivated public opinion in favor of the project of consolidation and appealed to the civic virtue of the people and the patriotic sentiment which favored the greatest city on the Western Continent, and succeeded in obtaining the consent of the Legislature to the passage of the law of 1896, in which consolidation was to take effect on 1st January, 1898, and authorizing the appointment of the President of the Commission appointed under the law of 1890, together with the Mayors of New York, Brooklyn, Long Island City, and State Engineer and Surveyor, the Attorney General and nine other persons to be appointed by the Governor as a Commission to make final report on or before 1st February, 1897.

It is true that we provided that a vote of the people should be had to sanction the proposition, which was done by a small majority of the voters, and the way was now clear to drive through the glorious provision of Home Rule in the proposed charter, which charter must contain "*among other things for attaining an equal and uniform rate of taxation, and of valuation for the purpose of taxation, throughout the whole of the territory of said municipal corporation as so enlarged.*"

Perhaps I am a little ahead of my story in not calling your attention to Brooklyn's fiscal and other conditions at this time. Property in a great portion of Brooklyn had been saddled with assessments for great improvements to such an extent that the people were not paying them, and allowing the city to become the owner of such property, in preference to such payments, until the distinguished lawyer, Hon. William M. Evarts, proposed and had adopted a bill of relief; property from business conditions was generally unproductive; our schools were only conducted upon the half-class system; our streets were paved with the poorest kind of pavements, if any, and our citizens were crying for pure and more water to supply their

wants; in fact, we were on the verge of bankruptcy, and we must look for relief somewhere.

Therefore a partnership with some one of almost unlimited capital and resources was desirable and that was old conservative New York, bringing in Queens and Richmond, who were financially much like Brooklyn, to help out the balance of power in the new city, and also thereby constituting a city which could obtain and maintain by its combined influence substantial Home Rule for all.

To illustrate Brooklyn's then condition financially, our property was comparatively assessed at near its full value. Brooklyn's debts and tax rate for local purposes were about equal to the constitutional limitation; New York had a comparatively smaller debt, a lower tax rate and lower assessments, and had a *surplus* over her constitutional limitations on 1st January, 1898, of \$19,339,637.12, while Brooklyn's deficit was \$19,617,923, Queens' deficit, \$5,094,431, Richmond's deficit, \$1,049,581, leaving a net deficit of \$6,422,299.37, and New York had an accumulation in her Sinking Fund from other revenues that would meet fully its indebtedness when due.

With such a partner a partnership was more than desirable, and now we Brooklynites must see that the terms and conditions are made favorable to ourselves; we must bring about the consolidation of the debt; we must provide for a full equal representation in the Municipal Assembly, and there block all appropriations unless by consent of two thirds of all the members; we must enforce the law of equal valuation and thereby increase valuations in Manhattan; we must have control or equal representation in the Board of Estimate where the appropriations, both ordinary and extraordinary, are made, and I say to you, my friends, we have accomplished all we set out to do, and more. Why, it was so easy, consolidation of the debt at once used up the surplus of Manhattan and forced an increase of assessments in 1899, by which the paralyzed condition of the city in 1898 was relieved, but at your expense,

such increase of assessments being \$300,000,000; then another Commission of Revision of the Charter was appointed, and that commission was also in favor of Home Rule, and Borough Home Rule was intensified, a few minor changes of departments were made, and then an ideal Board of Estimate was created, in which a representation was given to each borough, except Manhattan, largely in excess of any representative principle, either numerically or financially; in fact, the asinine proposition was made law, that those who are more anxious to spend the people's money liberally, were given one-half of the representation, while they pay only 25 per cent. of the taxes, a board which was originally constituted exceptionally in our form of government, as a board to economize public expenditures, was made a log-rolling, extravagant and unrepresentative body and perhaps unconstitutional to the extent of conferring on individuals the power to cast two and three votes each.

My story is not yet complete. Time rolls on, and the demand, manufactured, for other extensive public improvements, such demands scientifically made to meet each purpose, calls for more surplus over the debt limit, and the law-abiding citizen is appealed to to see that the laws are enforced, that assessors shall stop committing perjury, and that irregularities of assessments, so gross and glaring should be remedied. Gentlemen, the theory that the American people are fond of being deceived is again illustrated, and so Manhattan is increased about 48 per cent. in valuation, Brooklyn 27 per cent., The Bronx 60 per cent. Hear what Hon. George H. Andrews, a very distinguished ex-President of the Tax Department, has to say:

"An increase of assessed values, while it may, for the moment, secure a decrease in the rate of taxation, has a direct tendency to foster extravagance in expenditure. Accustomed for many years to regard the nominal rate of taxation as the measure of the burden, it would be easier

for extravagance and corruption to find shelter in an enlarged basis than in a restricted one."

Perhaps this history of events so familiar to you all, except when combined and shown in narrative form, is uninteresting, but, gentlemen, the master stroke of one who has just obtained what he desired, by proclaiming the rigid enforcement of the law of assessments, now turns to that very valuable asset of Manhattan, its Sinking Fund, and proposes, notwithstanding the obligation that "all moneys and revenues of said city heretofore pledged and appropriated to and constituting and forming the said Sinking Fund shall continue to be and the same are hereby pledged and appropriated to said fund until all of said bonds and stocks of the said city shall be fully and finally redeemed," that said fund is to be used to the extent of the excess of such fund, for the reduction of taxation, an entirely different purpose than that provided by the pledge.

I desire to call your special attention to the fact that it is only "The Sinking Fund of the City of New York for the redemption of the city debt," the old city of New York, is to be used and not the Water Revenue of the Borough of Brooklyn, for which was collected for the years 1898, 1899, 1900 and 1901 the sum of \$8,749,768.71, and which fund is to be applied mainly, only, for the maintenance, improvement and extension of the system of water supply of Brooklyn.

Again another method of appropriating the funds of Manhattan towards the reduction and payment of Brooklyn's taxes.

Now, having perhaps made an impression of the inequalities of the law, you might inquire what is the remedy. Although a Brooklynite for this purpose only, yet I am a very strong advocate of economy of administration, and as a just criticism of the present ideal (?) administration, submit that the result of the present condition is a justification of the fact that the budget, increased as it is for 1903 over \$2,500,000 for local purposes, is a fair assurance

that the budget of the previous administration was radically economical, especially when it is remembered that the increase permissible annually, of the budget, based upon the natural growth of the city in its increased valuation, is only \$2,000,000. Gentlemen, economy compels therefore no greater increase of ordinary expenditures, including interest on the bonds issued for extraordinary expenditures, of \$2,000,000 annually. I submit, with the legislative mandatory proposal of 1,500 policemen, with the proposed increase by the adoption of the second platoon system in the fire department, and with the usual increase for school purposes, the annual basis of \$2,000,000 must be increased.

It was once stated by a distinguished statesman that the more money that was left in the pockets of the people the more they would spend, and thus conduce to a better business condition. I add to this, that the more money or capital an administration has to call upon, the larger the appropriations will become. If you agree with these propositions, no matter how we dislike the situation, it is our duty to face it, and make the effort to reform the reformers, and I propose that the Home Rule principle be applied to expenditures as well as other matters. Let us have absolute Home Rule; boroughs to be self supporting, and submit the following as an amendment to the power of the Board of Estimate, viz.: For the purpose of determining the amount appropriated to each borough, the said board shall separate the items of each department applicable to each borough, other than for general purposes, and upon such separation, keep such appropriations for each borough within the constitutional limitations applicable to the whole city, and apply the rate to the real and personal property valuations in each borough respectively, according to the appropriations made as herein provided.

And now, gentlemen, with your permission, I will drop my assumed character as a Brooklynite, and simply say that if this remedy was adopted, it might not be so happy for Brooklyn, but it would be a great deal fairer for

Manhattan, which we have loved, and I hope still cherish, notwithstanding we are only acting a minor part in the government of this city by the force of unjust laws, except in the payment of expenditures.

In conclusion, gentlemen, Home Rule is somewhat a farce, while the Legislature is constantly tinkering and experimenting with our great interests, increasing our debt, by operation of law, \$360,000,000, when you capitalize at 3 per cent. the increase annually of \$12,000,000 in expenditures, borne by Manhattan Borough, and then have to say, that the only one to hold responsible for the result is the Charter Revision Commissioners and the Legislature.



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